



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 19 1979

THE ADMINISTRATOR

SUBJECT: Supplemental Guidance Regarding Implementation of Section 110(f)  
of the Clean Air Act - ACTION MEMORANDUM

FROM : Assistant Administrator for Air, Noise, and Radiation *DH*  
Assistant Administrator for Enforcement

TO : The Administrator

Regional guidance on responding to an energy emergency under Section 110(f) was issued on March 6, 1979. Since that time the President has declared a regional energy emergency in Florida; Connecticut and New York have held hearings on low sulfur fuel oil availability; and the President has instructed EPA to use full authority to take price differentials into account in making recommendations on Section 110(f) waiver requests. Based on our experience subsequent to the Section 110(f) regional guidance we now propose the following supplemental guidance detailing information necessary for determining the existence of an energy emergency and policy guidance on the extent to which price differentials are to be incorporated in a waiver recommendation.

I. Policy on Price Differentials

The President, in his April 5, 1979, energy address, directed the Administrator to "consider unusually large increases in the price differential between complying and non-complying fuels as a basis for recommending approval of state suspension requests" and to "use his full authority to take into account price differentials and to provide the President with information on price differential increases when making recommendations to him on such requests." This directive does not imply that states must make a price differential case when petitioning for Section 110(f) waivers. It does allow the Administrator to consider price differentials whenever a state makes such a case.

On June 7, 1979, the State of New York held hearings on a request by a public utility for a Section 110(f) SIP suspension of the low sulfur fuel oil requirement. The issue before New York was not based on an actual unavailability of complying low sulfur fuel oil but was based on whether the high price of complying fuel oil relative to non-complying fuel oil was sufficient justification for a SIP suspension. EPA was requested by New York to provide policy guidance on this issue.

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Price differentials between complying and non-complying fuel oils may provide a sufficient justification for a SIP suspension only when such differentials actually cause (or are anticipated to cause) the effects of an energy emergency listed in Section 110(f)(2), i.e., high levels of unemployment or a loss of necessary energy supplies for residential dwellings and such effects could be totally or partially alleviated by an emergency suspension.

Whenever it appears that price differentials may become part of the basis or the basis of a Governor's petition to the President for a declaration of an energy emergency, Regional Administrators should make every effort to assure that the state develops an adequate record on the impact of price differentials. Recommendations to the President concerning petitions for an energy emergency shall not be based on price differentials in the absence of an adequate record establishing the impact of such price differentials. Further, in exercising the Section 110(f)(3) disapproval authority EPA shall examine the price differential impact of a SIP suspension to determine its continued validity and act accordingly. During the period of a suspension, price differentials and the impacts of price differentials will be monitored by EPA to determine the continued validity of a price differential basis for a SIP suspension.

## **II. Information Necessary to Document the Existence of An Energy Emergency**

The following list of information needs is an expansion of those general items listed in paragraph III(A) on pages 5 and 6 of the March 6, 1979, regional guidance. As the record of any EPA decision or recommendation regarding a Section 110(f) waiver request will be primarily the state's record, a concerted effort should be made to assure that such record contains the following information as well as any available information on the issues listed in paragraph III(A). Although EPA should provide assistance in developing the state's record, the responsibility of providing this information rests with the state and the source.

1. Identities of affected or potentially affected parties, including:
  - (a) parties claiming a shortage together with the basis of their claims,
  - (b) affected customers (ultimate users), and
  - (c) suppliers (potential or actual) to parties experiencing shortages or cutbacks.
2. Information concerning the amount and duration of an expected shortage including:
  - (a) monthly demand for two calendar quarters before and after a SIP suspension,

(b) projected shortfall of conforming fuel for the period in item (a).

(c) any circumstances affecting a shortage, such as abnormal weather conditions

(d) unanticipated changes in supply, demand, or availability of transportation.

3. A summary of the current inventories of the various parties affected, including the following information:.

(a) by type and sulfur content

(b) storage capacity/blending capacity

(c) historical comparison of supplies/inventory over last 2 years

(d) desulfurization capacity and a historical summary of such capability, including any recent (3 year) changes in desulfurization capacity.

4. Information on alternative supplies of available conforming fuel and documentation of those steps taken to locate such fuels. An adequate documentation will include a list of all suppliers contacted (including date of contact and mode of contact), the response of each supplier contacted, copies of correspondence with the suppliers (including telephone logs), and any other memoranda, notes, or reports evidencing the availability or unavailability of fuel oil.

5. Information on the availability of other fuel supplies which though not conforming represent a minimal increase in sulfur levels (i.e., 1% sulfur content versus 0.3% sulfur content).

6. A summary of the contractual arrangements between various parties, suppliers and users and a description of the available options in the event of a fuel oil shortage.

7. What actions have been taken or considered to mitigate the environmental, energy, and employment impacts of the shortage situation or to conserve conforming fuel (mandatory or voluntary)? Examples of such measures may be conservation measures, voltage reductions, thermostat reductions, wheeling and the substitution of natural gas for oil. The amount of conforming fuel oil saved by each measure should be detailed.

8. Which facilities may have to close down as a result of the shortages? What is the potential impact on employment in the area?

9. Which facilities can convert to alternate fuels? What is the lead time necessary for these facilities to convert?

10. How will SIP suspensions alleviate the shortage?

- (a) what is the present SIP limitation on fuel use
- (b) what would the new requirement be if the SIP is suspended.
- (c) how much conforming fuel would be saved.
- (d) can anything within the existing SIP be done to wholly or partially alleviate the shortage.
- (e) What steps will the state undertake to mitigate environmental impacts.
- (f) can a fuel user blend conforming and non-conforming fuels to minimize any local environmental impact of using non-conforming fuels?

11. Which sources would violate NAAQS if the emissions limitations are suspended? What is the present attainment status in the affected areas?

With regard to a request for a 110(f) suspension based on price differentials the following additional information would be required:

1. A discussion of fuel prices, including:

- (a) a one year history of prices paid for conforming fuel, under contract or on the spot market.
- (b) the prices of non-conforming fuels by sulfur content.
- (c) the prices of any available alternative fuels the use of which would not require a suspension.

2. The impact of price differentials of complying fuels relative to non-complying fuels (at various sulfur levels) on unemployment (e.g., layoffs, plant closures) and residential energy supplies, including:

- (a) a examination of various sulfur content fuels and alternative fuels.
- (b) the mitigating effects of conservation measures and the substitution of natural gas for oil.

III. Recommendation

We recommend that you sign the attached memorandum to the Regional administrators.

  
David G. Hawkins

  
Marvin B. Durning